

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

LARRY E. EALY,

Plaintiff,

:

Case No. 3:09-cv-010

-vs-

Chief Judge Susan J. Dlott  
Magistrate Judge Michael R. Merz

:

VISITING JUDGE JAMES D. RUPPERT,  
et al.,

Defendants.

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**REPORT AND RECOMMENDATIONS**

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This case was filed January 12, 2009 (Doc. No. 1). Upon initial review under 28 U.S.C. § 1915 on January 15, 2009, allowed issuance of process to Defendants Hieber, Speelman, and Rankin if properly prepared and presented by Plaintiff. On April 11, 2009, the Court advised Plaintiff that Fed. R. Civ. P. 4(m) requires that a case be dismissed for want of prosecution unless process is served not later than 120 days from the filing of the Complaint. In this case, Plaintiff's time for service of process expires May 12, 2009, and the case will be dismissed for want of prosecution unless service is made by that date.

Despite having filed a complaint for judicial misconduct against the undersigned for impeding issuance of process in some of his cases, Plaintiff has failed entirely even to obtain issuance of process in this case. It should be dismissed with prejudice under Fed. R. Civ. P. 4(m). May 12, 2009.

s/ **Michael R. Merz**  
United States Magistrate Judge

## NOTICE REGARDING OBJECTIONS

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within ten days after being served with this Report and Recommendations. Pursuant to Fed. R. Civ. P. 6(e), this period is automatically extended to thirteen days (excluding intervening Saturdays, Sundays, and legal holidays) because this Report is being served by one of the methods of service listed in Fed. R. Civ. P. 5(b)(2)(B), (C), or (D) and may be extended further by the Court on timely motion for an extension. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendations are based in whole or in part upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within ten days after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See United States v. Walters*, 638 F. 2d 947 (6<sup>th</sup> Cir., 1981); *Thomas v. Arn*, 474 U.S. 140, 106 S. Ct. 466, 88 L. Ed. 2d 435 (1985).